

DESCRIPTION AND SAMPLE

In s.13, Sale of Goods Act 1979 it is provided that;

"Where there is a contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description."

It is possible to consider that this provision only relates to unascertained goods which obviously cannot be identified other than by description.

Arcos v E A Ronaasen & Son [1933] AC 470

A contract for the sale of a quantity of wooden staves for making barrels described the staves as being 1/2 an inch thick. Some of the staves delivered were not 1/2 an inch thick but very slightly out. There was nothing wrong with the quality of the wood and they could still be used for the intended purpose of making barrels. The buyer rejected the goods as the price of wood had fallen and he could purchase them cheaper elsewhere

Held: The purchasers were entitled to reject the goods under s.13 as they were not as described

(Changes to SOGA means this case would not succeed now)

The alternative is to apply it to all goods.

Varley v Whipp [1900] 1 QB 513

The plaintiff bought a reaping machine sight unseen. Seller said he bought it the previous year and hardly used it. The buyer took delivery and the machine was old and obviously mended. It was returned (*slightly used*) within a week.

Held - Buyer could reject goods as small amount of use was not acceptance, as the goods did not correspond with the description, a breach of s.13.

This can lead to a very wide application of the concept of description.

Beale v Taylor [1967] 1 WLR 1193

A car was described by the seller (*in good faith*) as a 1961 Triumph Herald convertible. It was later found to be two halves of two different cars welded together. Only the rear half matched the seller's description.

Held – The defendant was liable for a breach of (s13 Sale of Goods Act) on the grounds the car did not match the description.

The alternative argument is that the test is what reliance is placed on a statement.

Harlingdon and Leinster Enterprises Ltd v Christopher Hull Fine Art Ltd [1990] 1 All ER 737

An art dealer who, to the buyers knowledge (*another art dealer*), was not an expert on German impressionist paintings, offered to sell a painting which he claimed were by a famous German impressionist "Gabriele Munter", after inspecting the paintings the buyer bought it. They sold the painting on. The painting turned out to be a forgery.

Held – The buyer had relied on his own skill and judgement when deciding to buy, there was no reliance by the buyer on the description given. The sale was not "*by description*".

However, the preferred option is a mixture of the two and, although this does not allow certainty it does provide for flexibility as, should the description not be part of the contract, so that s.13 does not apply, then the buyer can claim on the basis that the description was a misrepresentation and subject to the appropriate remedies.

The different buyer hypothesis is strengthened by the provisions of the Unfair Contract Terms Act 1977 as it states that where the buyer is buying **as a consumer**, the provision in s.13 cannot be excluded but a seller may exclude or limit in the case of any other buyer in so far as the exclusion or limitation is reasonable.

Rasbora Ltd v JCL Marine Ltd [1976] 2 LI.Rep 645

Business can buy as a "consumer."

So that a business may well buy as a consumer and an individual.

SAMPLE

Under s.15, Sale of Goods Act,

"(2) In the case of a contract for sale by sample there is an implied condition-

that the bulk will correspond with the sample in quality;
that the goods will be free from any defect, [making their quality unsatisfactory], which would not be apparent on reasonable examination of the sample."

This leaves open the question as to what is a sale by sample?

Where the buyer is shown half a dozen potatoes as examples of the contents of a closed bag or a trade customer is shown sample merchandise by a sales rep these would appear to be sales by sample.

Meyer v Everth [1814] 4 Camp 22

The plaintiff bought 50 hogsheads of "*Hambro Sugar Loaves*" of excellent quality and stated that all were of such quality as per the sample. The plaintiff sued as the sugar was not as the sample.

The delivery note stated "*50 hogsheads of Hambro Sugar Loaves, at 155s, free on board a British Ship, acceptance at 70 days*". The defendant's solicitor stated there was no stipulation the sugar was as per the sample.

Held – Case dismissed, there was no reference to a sample in the contract. It was not a sale by sample and the sample can only be used as evidence of a deceitful misrepresentation,

However, this is easily avoided by use of the name of the thing so specifically that a sample would have to be used to identify it.

Cameron & Co v Slutzkin Pty Ltd [1923] 32 CLR 81

The appellant contended that the respondent was bound by the actual words of the contract, and compelled to accept "*Matchless 2475 White Voile*". The term had no common trade meaning although it is recognised by customers of the appellant. The goods delivered were inferior to that sample, and there was a binding contract for voile as per specimen produced.

Held – It was not a "sale by sample" but by written contract. The result is the appellant fails, and the judgment on the action and counterclaim stands. Appeal dismissed with costs.

The remaining question is, if an item is seen by the buyer but another item is, in fact, supplied. While this is obviously a sale by sample there is no bulk for comparison.

Section 15 was modified by the Sale and Supply of Goods Act 1994 by adding s.s.15A

"(1) Where in the case of a contract of sale-

- (a) the buyer would, apart from this subsection, have the right to reject goods by reason of a breach on the part of the seller of a term implied by section 13, 14 or 15 (of the Act) , but,

(b) the breach is so slight that it would be unreasonable for him to reject them, then, if the buyer does not deal as a consumer, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty.

(2) This section applies unless a contrary intention appears in, or is to be implied from, the contract.

(3) It is for the seller to show that a breach fell within subsection (1)(b) above.

(4) This section does not apply to Scotland.”